BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Section 39006 (now § 17215.5); Statutes 1996, Chapter 509 Filed on July 22, 1998 Amended to add: Education Code Sections 17213.1, and 17215.5 (former § 39006); Statutes 1996, Chapter 509; Statutes 1999, Chapter 1002; Statutes 2000, Chapters 135 and 443. Filed on September 18, 2001 By Brentwood Union School District, Claimant	No. 98-TC-04, amended by 01-TC-03 *Acquisition of Agricultural Land for a School Site* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 30, 2004)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

_____ _____

PAULA HIGASHI, Executive Director Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Section 39006 (now § 17215.5); Statutes 1996, Chapter 509 Filed on July 22, 1998 Amended to add: Education Code Sections 17213.1, and 17215.5 (former § 39006); Statutes 1996, Chapter 509; Statutes 1999, Chapter 1002; Statutes 2000, Chapters 135 and 443. Filed on September 18, 2001 By Brentwood Union School District, Claimant	No. 98-TC-04, amended by 01-TC-03 *Acquisition of Agricultural Land for a School Site* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 30, 2004)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 30, 2004. David Scribner, representing Schools Mandate Group, appeared on behalf of the claimant, Brentwood Union School District. Susan Geanacou, Blake Johnson, and Walt Schaff appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 5-0.

BACKGROUND

Test claim legislation: The amended test claim includes claims made under two separate sections of the Education Code.

Education Code section 17215.5[1] requires that prior to acquiring property for "a new schoolsite in an area designated … for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:"

- That the district has "notified and consulted" with the local zoning agency (city and/or county) that has jurisdiction over the proposed school site; and,

[1] Former Education Code section 39006 enacted by Statutes 1996, chapter 509, was renumbered to section 17215.5 by Statutes 2000, chapter 135, between the time of the original and amended test claim filings.

- That the final selection has been evaluated "based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land," and,
- That the district will "attempt to minimize any public health and safety issue resulting from the neighboring agricultural uses.…"

The California Farm Bureau sponsored the test claim legislation because restrictions imposed on pesticide use on agricultural land bordering schools resulted in a net loss of profitable land from the neighboring parcel. The sponsor argued that school districts locate schools in agricultural areas often, and that the intent of the legislation is not to stop siting schools in these areas, but rather to, "… require dialogue and exchange of information between the school district and the city or county when a school is proposed for an agricultural area."[2]

Education Code section 17213.1[3] requires that if a school district wishes to apply for state funds under the Leroy F. Greene School Facilities Act of 1998, it must perform a number of specified activities. The Leroy F. Greene School Facilities Act established a new state program in which the State Allocation Board would provide state per pupil funding for new school facilities construction and school facilities modernization. The act included Proposition 1A, passed by voters in November 1998, that authorized the sale of $9.2 billion in general obligation bonds for K-12 schools ($6.7 billion) and higher educational facilities ($2.5 billion.) The proposition also limited, with some exceptions, the fees school districts could levy on developers and homeowners to finance school facilities.[4] The activities required by section 17213.1 include the following:

1) Prior to acquiring the site, the school district must contract with an environmental assessor[5] (assessor) to supervise the preparation of, and sign, a Phase I environmental assessment[6] or the school district may choose to forgo a Phase I assessment and proceed directly to a preliminary endangerment assessment.[7]

---

[2] Senate Committee on Education, Analysis of Assembly Bill No. 1724 (1995-96 Reg. Sess.) as amended June 12, 1996, page 2.

[3] Education Code section 17213.1 was amended by Statutes 2001, chapter 865 and Statutes 2002, chapter 935 subsequent to the amended test claim filing to make public review voluntary under subdivisions (a)(6)(A)-(a)(7).

[4]Office of the Legislative Analyst, analysis of Proposition 1A, Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, pages 3-4. <http://www.lao.ca.gov/ballot/1998/1A_11_1998.htm> [as of July 19, 2004].

[5] Defined by Education Code section 17210, subdivision (b).

[6] Defined by Education Code section 17210, subdivision (g).

[7] Defined by Education Code section 17210, subdivision (h), as an "activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning ability, public heath or the environment."

2) If the district chooses to complete a Phase I environmental assessment and the assessment concludes that further investigation of the site is not necessary the district must then submit the assessment to the Department of Toxic Substances Control (DTSC).
   a) If the DTSC finds the assessment sufficient, it will notify the California Department of Education (CDE) that the assessment has been approved.
   b) If the DTSC does not find the assessment sufficient, it will instruct the district on what steps need to be taken to complete the assessment.
   c) The DTSC may also conclude that a preliminary endangerment assessment is required based on the findings of the Phase I environmental assessment.
3) If the Phase I environmental assessment concludes that further investigation of the site is necessary or if the district chooses to forgo a Phase I assessment and to move directly to a preliminary endangerment assessment, the district has two options:
   a) it must either contract with an assessor to supervise the preparation of, and sign, a preliminary endangerment assessment, or,
   b) it must enter into an agreement with the DTSC to prepare this assessment (including an agreement to compensate DTSC for assessment costs).
4) The preliminary endangerment assessment shall conclude EITHER:
   a) further investigation is not required; or,
   b) that a release of hazardous materials has occurred or there is a threat of a release of hazardous materials at the site.
5) The school district must publish notice that the preliminary endangerment assessment has been submitted and shall make the assessment available for public review according to guidelines provided by subdivision (a)(6).[8]
6) The DTSC shall then either find:
   a) that no further study of the site is required; or,
   b) that the preliminary endangerment assessment is not satisfactory and further action is necessary; or,
   c) if a release of hazardous materials has been found to have occurred and the district wishes to go forward with the project the district must:
      i) prepare a financial analysis of the costs of response action required at the school site; and,
      ii) assess the benefits of the site; and,
      iii) obtain approval from the CDE for the site.

[8] Since the filing of the amended test claim, Statutes 2001, chapter 865 amended this to make public review voluntary under section 17213.1, subdivisions (a)(6)(A)-(a)(7).

Further, section 17213.1[9], subdivision (11) states that "costs incurred by the district" may be reimbursed in accordance with section 17072.13. Section 17072.13, which is also part of the Leroy F. Greene School Facilities Act of 1998, allows for 50% of costs incurred by the district during the proposal and siting process to be reimbursed under the act. Section 17213.1 was enacted in response to Joint Legislative Audit Committee (JLAC) hearings, held in 1992, which concluded that the existing procedures for approval of school site acquisition must be "immediately reconfigure[d… to ensure local compliance with the laws." Specifically, the bill was in response to the actions of the Los Angeles Unified School District, which a legislative committee report alleged requested state approval for at least nine schools with knowledge that the sites may have contained toxic contamination.[10]

School District Facilities: Under current California law, school facilities can be constructed with or without state financial assistance. The School Facility Program (SFP) was created in 1998 under the Leroy F. Greene School Facilities Act[11] to administer state funds for school facility construction. The SFP was created to streamline the process for receiving state bond money for public school facilities construction. The program, which involves the State Allocation Board (SAB), Office of Public School Construction (OPSC), the School Facilities Planning Division (SFPD) of the CDE and the Division of the State Architect (SA), allocates funding to local school districts from statewide general obligation bonds passed by the voters of California.

The first funding for the SFP came from Proposition 1A, approved in 1998, which provided $6.7 billion for K-12 facilities. The second funding came from Proposition 47, which included $11.4 billion for K-12 facilities. An additional $12.3 billion was added to this fund with the passage of Proposition 55 in March 2004.

A school district wishing to receive state funding submits a funding application package to the SFP. The OPSC then reviews and evaluates the package under its regulations and policies. Approval of the plans by both the SA and the SFPD are required before the SAB approves the apportionment.[12] The money is then released to the district, which is required to submit expenditure reports to the OPSC, which audits all allocations.[13]

In order to receive the required approval of the CDE, the school district must follow the appropriate guidelines under California Code of Regulations, title 5, division 1, chapter 13,

---

[9] All statutory references are to the Education Code unless otherwise indicated.

[10] Conference Report on Senate Bill No. 162 (1999-2000 Reg. Sess.) as amended July 12, 1999, page 4.

[11] This statute (Stats. 1998, ch. 407), among others, is the subject of test claim 02-TC-30, *School Facilities Funding Requirements.*

[12] The New Construction Program provides 50% state funds for public school projects while the Modernization Program provides 60% state funds.

[13] See School Facility Program Guidebook. <http://www.documents.dgs.ca.gov/OPSC/ PDF-Handbooks/SFP_GdBk.pdf> [as of July 19, 2004]. This document is also part of test claim 02-TC-30, *School Facilities Funding Requirements.*

subchapter 1.[14] These regulations include guidelines on site selection,[15] design of education facilities[16] and procedures for plan approval.[17]

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code 17514. In the original claim, claimant alleges that the test claim legislation requires school districts to engage in the following reimbursable state-mandated activities:

1. Develop and adopt policies and procedures in accordance with Education Code section 39006 (now § 17215.5) for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based on all factors affecting the public interest, not limited to selection based on the cost of the land.
4. Prior to the commencement of purchasing property for any school site:
    a. research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and,
    b. research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
    a. notify the city, county, or city and county within which the prospective school site is located; and,
    b. consult with the city, county or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board to make the following findings:
    a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,

[14] See School Site Selection and Approval Guide. <http://www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp> [as of July 19, 2004].

[15] California Code of Regulations, title 5, section 14010.

[16] California Code of Regulations, title 5, section 14030.

[17] California Code of Regulations, title 5, sections 14011 and 14012.

b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,

c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

7. Conduct a meeting of the governing board to make the findings required by Education Code section 39006 (now § 17215.5).

8. Prepare and draft a board resolution with the following findings:

a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,

b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,

c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.[18]

In the amended test claim, claimant states that based on the Department of Finance (DOF) letter filed on January 26, 1999,[19] the claimant now believes that the following activities "were part of prior law and therefore removes them from [the] amended test claim filing:" (3) evaluating the property based on all factors, (4) researching city and/or county zoning requirements and current use, and (5) notifying the city and/or county within which the site is located.[20] Further, claimant amended the test claim to add new alleged state-mandated activities, as follows:

1) contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment (§ 17213.1, subd. (a)); or,

2) if the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement

[18] Original test claim (98-TC-04), pages 13-14.

[19] In a letter dated January 26, 1999, the DOF advised that activities [1] and [2] were reimbursable mandates, that activities [3], [4] and [5] were activities already required by state law and therefore not reimbursable mandates and that activities [6], [7] and [8] where not required by section 17215.5 and therefore also not reimbursable mandates.

[20] Amended test claim (01-TC-03), page 7.

with the DTSC to oversee the preparation of the preliminary endangerment assessment (§ 17213.1, subd. (a)(4)).[21]

Claimant commented on the draft staff analysis as follows. Under the Education Code, a school district must house and educate all students that establish residency in the district in a manner that does not risk the health or safety of its students. Claimant argues that the activities related to section 17515.5 are reimbursable if all discretion is removed from the district for siting and building a new school. Claimant states that school districts that are grossly overpopulated or facing an influx of students due to new development in the districts' boundaries have no choice but to build new school sites to house and educate pupils. Under circumstances of gross overcrowding in the district, claimant argues, the decision to build a new school site is practically compelled. Those districts that face overcrowding and have no choice but to seek out agricultural land for building a school site, according to claimant, are mandated to comply with section 17515.5 because there is no discretion afforded the district. Thus, claimant requests Commission staff to amend the analysis to include a limited exception to reimburse only those districts that can establish they are practically compelled to build a new school site due to overpopulation or expected additional development and growth within the district *and* that the only available option is to acquire agricultural land.

Claimant does not dispute the draft staff analysis conclusions regarding section 17213.1.

State Agency Position

In its January 1999 comments on the original test claim statute (§ 39006, now § 17215.5), DOF states that the alleged state-mandated activities of developing policies and procedures and training staff both appeared to be state-mandated activities of minimal cost. DOF states that the alleged state-mandated activities of evaluating the site on all factors and determining if the site is zoned for agriculture are already incorporated into state law under Education Code section 17212. And the requirement that the district notifies and consults with a city and/or county is also incorporated into state law under Education Code section 17213, subdivision (b). DOF states that since all three are previously required activities they are not new programs or higher levels of service. DOF also states that the alleged state-mandated activities of preparing a report, holding a meeting, and, passing a resolution, were not required by Education Code section 17215.5. DOF states that section 17215.5 only requires the governing board to make a finding; it does not require staff to prepare a report, conduct a specific meeting or prepare and pass a resolution.[22]

In its December 2002 comments on the amended test claim statutes (§§ 17215.5 & 17213.1), DOF reiterates its prior statements on policy development and training, stating that both appear to be state-mandated activities that impose minimal cost. DOF argues that the newly alleged state-mandated activities, such as contracting for a Phase I environmental assessment, and contracting for a preliminary endangerment assessment are not state-mandated. DOF points out that the entire section 17213.1 begins with "As a condition of receiving funding pursuant to

[21] Amended test claim (01-TC-03) page 16. A different numbering scheme is assigned to these activities on pages 9-10 of the amended test claim, but here the numbering scheme on pages 6-7 is used.

[22] DOF comments on test claim 98-TC-04, dated January 26, 1999, pages 1-3.

Chapter 12.5…"[23] Therefore, DOF argues that section 17213.1 sets out the requirements for an optional funding source and does not constitute state-mandated activities.

However, DOF reverses its position on the alleged state-mandated activities of preparing a report and a resolution, arguing that although they are not specifically required by the section 17215.5, these activities are "reasonable and consistent with the intent of the statute."[24] DOF states that, in accordance with its previous comments, holding a meeting is not specifically required by section 17215.5 and the board could make the required finding at "a regularly scheduled board meeting."[25]

Finally, DOF points out that, "[t]he appropriate period in the State Mandates process for identifying reimbursable activities is the Test Claim phase … [i]t is inappropriate to transform the Parameters and Guidelines phase … into a venue for Claimants to seek reimbursement for activities they failed to identify in their test claims."[26]

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[27] recognizes the state constitutional restriction on the powers of local government to tax and spend.[28] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[29] A test claim statute or executive order may impose a reimbursable state program if it orders or commands a local agency or school district to engage in an activity or task.[30] In

[23] Education Code section 17213.1.

[24] DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

[25] DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

[26] DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

[27] Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subjection of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders of regulations initially implementing legislation enacted prior to January 1, 1975."

[28] *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 735.

[29] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[30] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[31]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[32] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirement in effect immediately before the enactment of the test claim legislation.[33] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[34] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[35]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[36] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[37]

Issue: Do the test claim statutes impose a state-mandated activity on school districts within the meaning of article XIII B, section 6?

The courts have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs "mandated" by a new program or higher level of service imposed upon them by the

---

[31] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.); Lucia Mar Unified School Dist. v. Honig,* (1988) 44 Cal.3d 830, 835 *(Lucia Mar).*

[32] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875; reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[33] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878. *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[34] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[35] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 187; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[36] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[37] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

state.[38] Thus, the issue is whether the test claim statutes impose a state-mandated activity on school districts.

Education Code section 17215.5: This section requires the governing board of a school district to make three findings if the board wishes to acquire and build a new school on land zoned for agricultural use. The section states that before acquiring land zoned for agricultural use the governing board of a school district must find:

1) that the school district has notified and consulted with the city and/or county within which the site is located; and,
2) that the final site selection has been evaluated by the school governing board based on factors other than costs; and,
3) that the school district will attempt to minimize any public health issue resulting from neighboring agricultural uses.

The Commission finds that this section is not subject to article XIII B, section 6 because the decisions to construct a new school as well as where to site it are discretionary decisions made by the local governing board of a school district. Section 17215.5 does not require the acquisition of any land for a school, nor does it specify the type of land to be acquired (including land zoned for agricultural use.)

Although California law does express the intent of the Legislature that public education shall be a priority in the state and provided by the state,[39] there are no statutes or regulations requiring a school district or county board of education to construct school facilities. School districts are given the power by state law to lease [40]or purchase[41] land for school facilities, to construct school facilities[42] and to establish additional schools in the district.[43] However, in all of these statutes permissive language is used when describing the role of the governing board of the school district. In sections 17244 and 17245 the board "…is authorized…" and section 17342 states that the, "governing board of any school, whenever in its judgment it is desirable to do so, may establish additional schools in the district."

California courts have also found that the construction of school facilities within a school district is a discretionary decision of the school district. In *People v. Oken,* the court found that, "[w]here, when or how, if at all, a school district constructs school buildings is a matter within

[38] *Lucia Mar., supra,* 44 Cal.3d 830, 835; *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 1816.

[39] Education Code sections 16001, 16701 and 17001.

[40] Education Code section 17244.

[41] Education Code sections 17340 and 35162.

[42] Education Code sections 17245 and 17340.

[43] Education Code section 17342.

the sole competency of its governing board to determine."[44] This was reiterated in a state Attorney General opinion in 1988.[45]

> With the conventional construction of school facilties, the question of "where, when or how, if at all, a school district shall construct a school building is a matter within the sole competency of its governing board to determine ." (*People v. Oken* (1958) 159 Cal.App.2d 456, 460.) The same is essentially true with the construction of a school facility under the Leroy F. Greene State School Building Lease-Purchase Law.[46]

This language indicates that all aspects of new school facilities, including when they are constructed and if they are constructed at all, is a decision left to local school boards.

In other cases the courts have also held that the power to site a school belongs to the local school district and not the state. In *Town of Atherton v. Superior Court of San Mateo,* the court found that "[u]nder the statutes … the state has expressly granted the power of location to its agencies, the school districts."[47] In *City of Santa Clara v. Santa Clara Unified School District*, the court found that "the selection of a school site by a school district involves an exercise of legislative and discretionary action and may not be challenged as to its wisdom, expediency or reasonableness…."[48]

Additionally, there are no statutes that direct school districts where to place schools. Former Education Code sections 37000 through 37008 did relate to the specific location of schools, but were repealed by Statutes 1989, chapter 1256. Currently, the only section that pertains to state agency involvement in school site selection is section 17521. However, section 17521 only requires that the CDE create standards for use by school districts in the selection of school sites and allows school districts to request advice on the acquisition of a proposed site.

Therefore, based both on statutes and case law, the decision to acquire land on which to site a school and the decision as to which land to acquire are both decisions that are made at the discretion of the school district. If a district's decision is discretionary, no state-mandated costs will be found.

In *City of Merced v. State of California*,[49] the court determined that the city's decision to exercise eminent domain was discretionary. The court found that no state reimbursement was required for loss of goodwill to businesses over which eminent domain was exercised, the court reasoned as follows:

---

[44] *People v. Oken* (1958) 159 Cal. App.2d 456, 460.

[45] "Although Attorney General opinions are not binding, they are entitled to great weight." *Freedom Newspapers, Inc. v. Orange County Employees Retirement* (1993) 6 Cal.4th 829, 832.

[46] 71 Opinions Attorney General of California 332, 339 (1988).

[47] *Town of Atherton v. Superior Court of San Mateo* (1958) 159 Cal.App.2d 417, 428.

[48] *City of Santa Clara v. Santa Clara Unified School District* (1971) 22 Cal.App.3d 152, 161, footnote 4.

[49] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

> We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain.* [50] [Emphasis added.]

In *Kern High School District,*[51] the California Supreme Court found that costs associated with notices and agendas required by state law were not entitled to reimbursement if the requirements for notice and agendas were part of a program in which the school district had chosen to participate. In that case, the California Supreme Court affirmed the reasoning of the *City of Merced* case as follows:

> [T]he core point articulated by the court in *City of Merced* is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.[52]

The Supreme Court left undecided whether a reimbursable state mandate "might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program."[53] As explained below, there is no evidence in the record that school districts are "practically compelled" to acquire agricultural land to build schools. The test claim statute does not impose a penalty for noncompliance.

Although the Supreme Court declined to extend the *City of Merced* holding in a recent case,[54] its core point stands: there is no state mandate where a local government or school district freely undertakes activities at its option. The Commission is not free to disregard the clear statement of the California Supreme Court interpreting mandates law. Thus, pursuant to state law, school districts remain free to site new schools where they choose. The statutory duties imposed by section 17215.5 flow from the decision to site a school on land zoned for agricultural use. Based on the *Kern High School Dist.* case, since this decision is a local discretionary activity, any requirements imposed by the state on the local decision do not constitute a reimbursable state mandate.

Claimant argues that the Commission should find a limited exception to reimburse those districts that can establish they are practically compelled to build a new school site due to overpopulation

---

[50] *Ibid.*

[51] *Kern High School District, supra,* 30 Cal.4th 727.

[52] *Id.* at page 742.

[53] *Ibid.*

[54] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878. The Court reached its decision on alternative grounds not involving the *City of Merced* rationale.

or expected additional development and growth within the district and that the only available option is to acquire agricultural land.

The Commission disagrees because claimant does not submit any evidence as to the existence of this situation. The Commission must base its findings on substantial evidence in the record.[55]

> …[S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. [The finding must be supported by] …all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."[56]

Moreover, the Commission's regulations require that all factual evidence be supported by either a signed declaration and/or sworn testimony.[57]

Since claimant has not submitted evidence describing a situation where a school district meets the hypothetical criteria claimant suggests, the record does not support a finding of a state-mandated program. Therefore, the Commission finds that section 17215.5 does not impose a state-mandated activity on school districts within the meaning of article XIII B, section 6.

Education Code section 17213.1: This section, enacted in 1999, lays out the additional requirements[58] that school districts must satisfy in order to receive funding from the Leroy F. Greene School Facilities Act of 1998.[59] It requires school districts to contract for a Phase I environmental assessment or if necessary a preliminary endangerment assessment if the school district wishes to request state funding for the facility. These requirements specifically address the study of new school sites for natural, previous or potential releases of hazardous or toxic substances.

When construing a statute, the Commission, like a court, must ascertain the intent of the Legislature so as to effectuate the purpose of the law.

---

[55] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; Government Code section 17559, subdivision (b).

[56] *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

[57] California Code of Regulations, title 2, sections 1183.03, subdivision (b)(1) and 1187.5, subdivision (b).

[58] Basic requirements for school siting can be found in California Code of Regulations, title 5, sections 14001-14012 and Education Code section 17251.

[59] Section 17072.13 provides that a school district may request up to 50% of the cost of implementing this section if it chooses to request funding from the State Funding Program (SFP). If a school district qualifies as eligible for financial hardship under section 17075.10 or if the site meets the environmental hardship criteria in section 17072.13, subdivision (c)(1), then up to 100% of this cost can be requested from the SFP.

> In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose [citation]. At the same time, we do not consider statutory language in isolation [citation]. Instead, we examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts [citation]. Moreover, we read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness [citations].[60]

Section 17213.1's first sentence states, "As a condition of receiving state funding.…" The plain meaning of this section is that the requirements in section 17213.1 only apply to school districts that decide to request funding through the Leroy F. Greene School Facilities Act of 1998. Thus, the district's decision to seek funds under this act is discretionary and not mandatory. DOF alleges that approximately 58% of districts do not apply for funding under the 1998 Leroy Greene Act.[61]

As stated above, if a district's decision is discretionary, no state-mandated costs will be found.[62]

Therefore, the requirements imposed on the conditional funding from the Leroy F. Greene School Facilities Act of 1998 are not state-mandated activities, so section 17213.1 is not a reimbursable mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

The Commission finds that the test claim statutes, Education Code sections 17215.5 and 17213.1, do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This conclusion is based on the following findings:

1) For Education Code section 17215.5, the specified findings the school district must make if the proposed school site is on land zoned for agricultural use is not state-mandated because the decision to build a school, as well as where to locate it, including the acquisition of agricultural land for a school, is a discretionary decision left to local school districts by state law.

2) For Education Code section 17213.1, the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Ed. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.

---

[60] *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043.

[61] DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

[62] *Kern High School District, supra,* 30 Cal.4th 727, 742; *City of Merced v. State of California, supra,* 153 Cal.App.3d 777, 783.